[FR] CSA Withdraws Broadcasting Authorisation without Prior Formal Notification

IRIS 2006-10:1/20

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In a decision adopted on 27 September, the *Conseil d'Etat* has now laid down the way in which the procedure instituted by Article 42-3 of the Act of 30 September 1986, as amended, is to be implemented.

According to this text, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority- CSA) may, without prior formal notification, withdraw a radio or television station's broadcasting authorisation in the event of a substantial change in the information on the basis of which the authorisation had been issued, more particularly as the result of changes in the composition of company capital or management bodies, or in methods of financing. This procedure departs from the traditional sanctions procedure available to the CSA under Article 42-1 of the Act, which requires prior formal notification to be made before any authorisation is suspended, shortened or withdrawn.

Fréquence Mistral, a radio station operating under an agreement with the CSA and run by an association broadcasting in the Marseille area, had its broadcasting authorisation withdrawn, without prior formal notification, after the CSA had noted a continuous absence of broadcasting of the programme covered by the station's agreement. The CSA felt that the absence of the programme constituted a "substantial modification of the information on the basis of which the authorisation had been issued", within the meaning of Article 42-3 of the 1986 Act. The radio station, however, appealed to the *Conseil d'Etat* to have the heavy penalty cancelled. The *Conseil d'Etat*, the highest administrative court in the country, found that, according to Article 42-3, and in the light of parliamentary work, the purpose of the procedure it provided for was to enable the CSA to withdraw an authorisation to operate a radio or television broadcasting service if, under court supervision, it felt that the information used as the foundation for issuing the authorisation, particularly resulting from changes in the composition of company capital or in the management bodies or in financing methods, had been substantially altered, thereby casting doubt on the choices made at the time of issuing of the authorisation. The *Conseil d'Etat*, however, felt that it was not the purpose of this procedure to enable the CSA to check whether the holder of an authorisation was fulfilling the obligations incumbent on it under the terms of its agreement or regulations or statutory provisions and sanction any failings that could, after prior formal notification, result in the penalties provided for by Article

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42-1 of the Act. In the present case, by inflicting on the radio station, for disregarding its obligations in respect of broadcasting contained in the agreement it had signed with the CSA, the penalty of withdrawing its authorisation on the basis of Article 42-3 of the Act of 30 September 1986, as amended, the CSA had misunderstood the scope of the Act. The withdrawal of the authorisation was therefore cancelled.

This decision comes just as the CSA has been notified of the case of the channel TPS Star, a premium channel in the satellite package held by TF1 and M6, whose body of shareholders will be altered following the anticipated merger of CanalSat and TPS (see IRIS 2006-8: 14). Thus, under Article 42-3, in view of this change in the body of shareholders, the channel must obtain approval from the CSA in order to be able to continue broadcasting. Apart from the matters of shareholders and management of the channel, the CSA will have to decide whether there is also a change in format which could call the station's authorisation into question. Although the CSA has already had to consider cases under Article 42-3 in the past concerning television for which no charge is made, particularly when Suez ceased to hold shares in M6, or when TMC was sold to TF1 and the AB Group, this is the first time a case of this kind has arisen in respect of a pay television channel. The CSA's decision may be issued before completion of the TPS/CanalSat merger, which is expected by December at the latest.

Conseil d'Etat, (5e et 4e sous-sect. réunies), 27 septembre 2005, Association Fréquence Mistral

Conseil d'Etat, (5th and 4th sub-divisions combined), 27 September 2005; Association Fréquence Mistral

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